IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.415 OF 2006

Narendra Krishanlal Vohra Petitioner

versus

State of Maharashtra & others Respondents

Mr.D.B.Sawant for petitioner.

Mrs.Veena B. Thadani for respondent no.6.

Mr.A.H.Palekar, AGP for respondents 1 to 3.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 15th February 2006

PC :

1. The petitioner is challenging the order passed by the Minister for State Excise dated 24th November 2005 in a revision application which was preferred by one Manish Mahendrakumar Bhalani and one Hukumchand Harilal Bhalani. Manish Bhalani is respondent no.6 to this petition, whereas, Hukumchand Bhalani is impleaded as respondent no.7.

2. Petitioner submits that the Minister

committed a grave error in allowing the revision application and setting aside orders passed by the Commissioner of State Excise and District Collector.

3. It is not disputed by the parties that one Mahendrakumar Bhalani was the original CL-III licensee. However, petitioner contends that pursuant to an application made by said Mahendrakumar Bhalani name of the petitioner was added in the license as Partner. This was based upon an agreement with the deceased Mahendrakumar Bhalani entered into by the petitioner. A copy of the partnership agreement is placed on record so also letter addressed by Mahendrakumar Bhalani. Subsequently, Mahendrakumar Bhalani expired on 11th May 2005. Prior thereto, petitioner submits that he executed a will and all his estate was to be handed over thereunder to the petitioner and the sister of the deceased. It is pertinent to note that at the same time the brother of deceased Hukumchand also asserted his right to manage the country liquor shop on the strength of a will made by the deceased.

4. It is in these circumstances that the request of the heirs of the deceased Mahendrakumar to

transfer their names in the country liquor licence came to be rejected by the Collector and the order was confirmed by the Commissioner. Before the Minister, at the instance of respondent nos.6 and 7, during the course of exercise of revisional powers, these orders have been reversed and the Minister directs that the name of respondent no.6, as his mother Madhuri and another son Mayur having consented to do so, be added in the licence in place of the deceased. It is pertinent to note that brother of deceased has not challenged order of Minister but Narendra Krishnalal Vohra has challenged the same in this Court invoking the jurisdiction under Articles 226 and 227 of the Constitution of India.

5. After hearing Shri Sawant in support of this petition and Ms.Thadani for respondents and perusing the annexures to the petition as also the affidavit in reply, to my mind, interest of justice will be served if an opportunity is given to the petitioner to approach the competent Civil Court and assert his right, title and interest in the estate of deceased which includes a shop premises in question and based upon the will and other documents, claim appropriate reliefs. In such a suit, if instituted, it would be open for

the petitioner to apply for appropriate interim orders. The order of the Minister which is under challenge in this petition would operate subject to petitioner adopting appropriate proceedings. This course of action would not prejudice respondent no.6. This order is passed after perusing further affidavit dated 16th February 2006. Even if the order under challenge is acted upon, none dispute that the remedy of the petitioner is to move the Civil Court.

6. All contentions of both sides on merits are expressly kept open for being agitated in the competent Civil Court. Petition disposed of.

(S.C.DHARMADHIKARI, J.)